



# CROSS BORDER DYNAMICS AND LEGAL FAILURES: IDENTIFICATION OF LEGAL AND GOVERNANCE GAPS CONTRIBUTING TO UNCHECKED MIGRATION AND EXPLOITATION

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## ABSTRACT

The complexities of cross-border dynamics coupled with inadequate legal frameworks often contributes to illegal migration which further leads to the exploitation of immigrants. This research investigates the legal and governance gaps that contributes to these issues, it focuses on the extensive implications of ineffective migration management systems.

The study critically examines the interplay between domestic laws, international conventions, and regional cooperation, to identify the areas where the policies are inadequate, and emphasized the urgent need for comprehensive policy reforms with a special focus on Indian legal framework. The paper explores key issues, including the absence of a comprehensive refugee law in India and the lack of coordination between the State, Centre, and International Institutions.

This research aims to identify the shortcomings of legal frameworks and governance systems in response to migration issues, which often leads to exploitation with a special focus on the Mizoram-Myanmar border region. The paper aims to provide effective recommendations for strengthening legal and governance frameworks.

**KEYWORDS:** Illegal Migration, Border, Governance, Legal System, Policy, Exploitation

## INTRODUCTION

Migration in South Asia can be viewed as a livelihood strategy as they have migrated in search of better job opportunities, higher wages, improved living standards, and access to quality education. South Asia has witnessed several major migration and refugee crises over the decades. One of the most significant was the Partition of India in 1947, which triggered the mass displacement of communities—Hindus and Sikhs moved to India, while about six million Muslims migrated to Pakistan. The region also experienced the Halabja crisis in the late 1980s and the Soviet invasion of Afghanistan (1979–1989), which forced over six million Afghans to flee 3.2 million to Pakistan and 2.2 million to Iran. Other notable instances include the settlement of Bhutanese refugees in India and Nepal, the displacement of the Hajong community within India, the continued Rohingya refugee crisis, and the arrival of Tibetan refugees in India. These events reflect the complex and ongoing nature of forced migration in South Asia.

The term “illegal migration” refers to transboundary migration of people from one country to another country without valid documents by illegal means, often due to poverty, lack of economic opportunities, stagnation of income, fear of political and religious prosecution. The World Bank’s ‘*Migration and Remittance Fact Book 2016*’ provides a comprehensive snapshot of emigration, immigration, and remittance flows for all countries and territories which points out that the top 10 migration corridors (2013) in the world, three belong to South Asia: Afghanistan–Pakistan, Bangladesh–India, India–Pakistan. The India-Bangladesh migration corridor ranked as the third

largest corridor in 2013 accounting for a stock of 3.2 million persons. Failure of state-building process in many South Asian countries is equally a strong cause for illegal migration.

Separatist tendencies are omnipresent in South Asia and in many countries, opposition groups or dissident groups are in direct conflict with their central authority, in order to escape state action of suppression, they would illegally migrate to the bordered countries. For instance, the Sri Lankan LTTE cadres in Tamil Nadu or southern India; Indian Naxalites (Maoists) in Bangladesh and Nepal; Jihadists in Pakistan and Afghanistan; northeast separatist groups in Myanmar and many more. The Illegal Migrants (Determination by Tribunal) Act, 1983 (IMDT Act) was found to be insufficient in the identification and deportation of illegal migrants. Furthermore, deportation is continuous process and the powers of identification, detention and deportation of illegal foreign nationals.

South Asia is lacking a comprehensive legal regime or cooperative framework to govern illegal migration despite having evasive migration related issues and none of the South Asian countries have signed the UN Refugee Convention of 1951 and its 1967 Protocol. However, global initiatives have been taken to counter illegal migration such as the global agreement under International Organization for Migration which objective is to ‘ Prevent, combat and eradicate trafficking persons in context of international migration’. The International Criminal Police Organization support the efforts of national police authorities in breaking the criminal networks relating to migration. Narrowing down to India,

the Govt. has taken initiative the Ministry of External Affairs have initiated a campaign ‘Surakshit Jayen Prashikshit Jayen’. A comprehensive Integrated Border Management System is introduced to improve situational awareness. As stated India have not signed with the UN Refugee Convention Protocol. In *Mohammad Salimullah v. Union of India*, the Indian Supreme Court refused to quash the deportation of Rohingya refugees to Myanmar, stating that India is not bound by the principle of non-refoulement because it's not a signatory to the 1951 Refugee Convention.

India has been victim of influx of the Rohingya migrants from Myanmar. As of September 2024, UNHCR estimates that there are 676 Rohingya refugees in immigration detention across India, and 608 of them have no ongoing court cases or sentences pending. (International Refugee Report 2024). Bhutan has received migrants from both Nepal and India. Pakistan has received migrants from India, Afghanistan and a few from Bangladesh before partition. Nepal has received migrants from India and Bhutan. throughout the Liberation Tigers of Tamil Eelam (LTTE crisis), Sri Lanka has sent two distinct categories of migrants – Indian Tamils and Sri Lankan Tamils – to India. In August 2017, armed attacks extensive violence by brutal and ferocious Myanmar forces a mass exodus of migrants/refugees from its Rakhine state which has become a rising concern in South and Southeast Asian region and marked a historic migration crisis. In South Asia, Rohingya refugees are fleeing to Sri Lanka, India, Pakistan, and Bangladesh, leading to an increase in anti-Muslim and anti-refugee sentiments in the region. Almost 500,000 Rohingya refugees have fled to Bangladesh, and over 40,000 to India and Pakistan respectively.

### **Research Questions**

- Whether the gaps in coordination between state governments, central authorities, and international organisations result in addressing legal and governmental issues of immigration?
- What is the legal status of refugees in Mizoram, and how is the State governing the refugees from Myanmar?
- What structural reforms, policy shifts, or legal frameworks could be key component regarding the entry of illegal immigrants in India specifically focusing on the Mizoram-Myanmar border ?

### **Objectives of the Study**

1. To identify legal and governance failures that has contributed to influx of illegal immigrants.
2. To investigate, examine and analyse the current situation, circumstances, and issues regarding illegal migration.
3. To assess the role of regional and international legal frameworks, including the role of India under international law, relevant protocols and conventions and the extent of adherence to UNHCR protocols.
4. To identify and analyse the governance and institutional gaps in India’s border management and refugee protection mechanisms, with a focus on Mizoram.
5. To analyse empirical data collected through field research (surveys, interviews, and case studies) in Mizoram.
6. To critically study the implications of the absence of a

national refugee law in India on the status and rights of Chin and other

7. To offer legal and policy recommendations for improving refugee protection, border governance, and addressing cross-border exploitation.

### **RESEARCH METHODOLOGY**

To clearly define the aim and objectives of this research, it is important to choose a suitable methodology. Research methods are generally divided into two types: empirical (or non-doctrinal) and doctrinal. For this paper, the doctrinal method has been chosen, as it is most appropriate for studying existing laws and the legal framework related to refugees in India.

To provide a well-organized structure and to understand the scope of refugee and asylum laws in India—especially in the context of Indian citizens—this study will rely on secondary data. Secondary sources include information gathered from books, academic papers, journals, newspapers, and reliable websites. These sources are based on research where primary data was originally collected and analyzed.

### **International Legal Framework For Migration**

The international legal framework for migration encompasses various instruments, treaties, policies and principles which define rights and obligations of both state and migrants. However, there is no single comprehensive and binding instrument that establishes a framework for the migration governance.

The International Organization for Migration (IOM) in response to lack of centralized International Migration Law, built up a significant knowledge based on the international legal norms which can be referred to as international migration law. IOM’s work in international migration law and governance is firmly based on significant documents such as the IOM Constitution, Council decisions, policy papers, The 12-point IOM Strategy, The 2024–2028 Strategic Plan, and The Migration Governance Framework (MiGOF).

The United Nations High Commissioner For Refugees(UNHCR) is the UN Refugee Agency for displaced persons with the objective to provide aids and protection in emergencies and an advocate for improved asylum laws and systems. The ‘Refugee Convention 1951 Protocol And Its 1967 Protocol’ are the only global legal instruments that form the basis of the UNHCR. This forms the cornerstone for the protection of refugees based on the principle of non-refoulement. The principle of non-refoulement, enshrined in international law, prohibits states from returning individuals to a country where they face a real risk of persecution, torture, or other irreparable harm, regardless of their migration status. This principle is found in treaties like the 1951 Refugee Convention, the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR).

The 1951 Refugee Convention is a UN treaty that defines who qualifies as a refugee, state their rights and imposed obligation on the state to protect refugees. Although, this was opened for

signature in Geneva in July 1951, India decided not to become a signatory. India, being a developing country, has expressed concerns that the influx of migrants could place an additional strain to the limited resources. India prefers to retain flexibility in its refugee policies and focus on Bilateral Agreements with neighbouring countries while handling refugee situations. To be protected by the Refugee Convention, a person must be stateless or outside the country of his or her nationality and be unable to receive the protection of that country. Moreover, the Indian government has not ratified the 1967 Protocol which removes these geographic and time-based limitations, expanding the 1951 Convention to apply universally and protect all persons fleeing conflicts and persecution. Although not a signatory, India respects the principle of non-refoulement for holders of UNHCR documentation and continues to grant asylum to a large number of refugees from neighbouring States and respects UNHCR's mandate for other national. According to the Bombay High Court's ruling in *Syed Ata Mohammadi v. Union of India*, an Iranian refugee who has been accepted by the UNHCR should not be sent back to Iran. The non-refoulement principle, which forbids sending refugees back to a nation where they might be persecuted, served as the foundation for the Court's ruling. Despite not having ratified the 1951 Refugee Convention or its 1967 Protocol, this ruling upheld India's tacit adherence to international human rights standards.

### **Refugees And The Indian Legal Framework**

An asylum seeker is an individual who flees their home country and seeks protection in another nation, requesting recognition as a refugee. The term "refugee" is legally defined in the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. According to Article 1, paragraph 2 of the Convention, a refugee is someone who, owing to a well-founded fear of persecution based on race, religion, nationality, membership in a specific social group, or political opinion, is outside their country of origin and is either unable or unwilling to seek protection from that country. This definition underscores the importance of addressing refugee issues with a strong humanitarian and human rights perspective.

The term "asylum seeker" broadly covers individuals who have applied for refugee status, regardless of whether their applications have been officially accepted. On the other hand, Internally Displaced Persons (IDPs) are those who escape persecution or human rights abuses by relocating to another part of their own country. Internally displaced people, referred to as IDPs, have been forced to flee their homes by conflict, violence, persecution or disasters, however, they remain within the borders of their own country. As they have not crossed international borders, they are not legally considered refugees but are still in need of protection—typically by their own government—and are categorized separately as IDPs.

In the Indian context, refugees interact with the legal system in two primary ways. First, there are legal mechanisms that govern their entry and residence in India, along with related matters. Second, once refugees are within Indian territory, they are subject to Indian penal laws like any other individual, and may be involved in legal proceedings either as complainants

or as the accused. This means that various constitutional and legal provisions can be applicable to refugees, depending on the circumstances they face.

India currently lacks a specific domestic law defining or regulating the status of refugees. As a result, the government often treats refugees and asylum seekers as foreigners, without distinguishing them from economic migrants or other categories of immigrants. This leads to a significant oversight—refugees are often forcibly displaced from their countries and face threats to their lives and freedoms, unlike migrants who voluntarily relocate for economic or social advancement.

The need for a dedicated refugee law in India is evident in cases such as *National Human Rights Commission v. State of Arunachal Pradesh (1996)*. In this case, the Supreme Court intervened to prevent the expulsion of Chakma refugees, directing the state to ensure their right to life and personal liberty. Indian courts, in several instances, have recognized and upheld the principle of non-refoulement, which prohibits sending refugees back to a country where they face serious threats. Through such rulings, the judiciary has played a critical role in safeguarding the fundamental rights of refugees within India.

India lacks a dedicated law specifically addressing the status of refugees within its legal framework. In the absence of such a law, existing Indian legislation—like the Evidence Act, Criminal Procedure Code, and Indian Penal Code—will also extend to refugees. Although India has not signed the 1951 Refugee Convention or the 1967 Protocol, it is a party to several United Nations and international treaties related to human rights and refugee matters, which outline India's obligations regarding refugees.

*Gramophone Company v. Birendra Bahadur Pandey* and *Maganbai Patel v. Union of India* the Court clarified that international norms may be applied in India if they do not conflict with existing laws or the Constitution, even without formal ratification.

### **Constitutional Provisions and Refugee Rights**

Certain Articles of the Indian Constitution are applicable not only to Indian citizens but also to refugees residing on Indian soil. Most notably, Article 21, which guarantees the Right to Life and Personal Liberty, has been interpreted by the Supreme Court to apply universally—whether to citizens or non-citizens. Indian High Courts have also invoked principles of natural justice when dealing with refugee matters and have recognized the role of the UNHCR in protecting refugee rights. For instance, the Gauhati High Court has stayed deportation orders and allowed refugees to approach the UNHCR for refugee status determination.

Articles 22(1), 22(2), and 25(1) of the Constitution reflect the application of natural justice to all individuals, including refugees. The rule of law ensures that no one—citizen or foreigner—is deprived of life, liberty, or property without due legal authority. The Indian judiciary has treated these principles

as basic features of the Constitution, which cannot be amended, reinforcing the legal protections available to refugees in India.

Article 14 of the Constitution ensures equality before law and protection against arbitrary action, and this protection extends to refugees as well. In *Louis De Raedt v. Union of India*, the Supreme Court confirmed that refugees enjoy the right to life and liberty under Article 21. However, in *State of Arunachal Pradesh v. Khudiram Chakma*, the Court clarified that this right does not extend to the right to settle or reside in India, which remains exclusive to Indian citizens.

The Chakma refugees, who fled from the Chittagong Hill Tracts in present-day Bangladesh, faced local opposition in Arunachal Pradesh. In *NHRC v. State of Arunachal Pradesh* (1996), the Supreme Court held that the rule of law applies equally to all, and that the state is duty-bound to protect the life, health, and well-being of all persons, including non-citizens. The Court also directed the state to review pending citizenship applications of Chakma refugees and ensure they are not forcibly evicted.

The Madras High Court, in several cases such as *Gurunathan v. Government of India* and *A.C. Mohd. Siddique v. Government of India*, the High Court of Madras resisted the forced return of Sri Lankan refugees, stating that no refugee should be repatriated against their will. In *P. Nedumaran v. Union of India*, the Court acknowledged the UNHCR's role in determining the voluntariness of repatriation and held that it is not for the Court to assess this. Similarly, in *Syed Ata Mohammadi v. Union of India*, the Bombay High Court ruled that an Iranian refugee recognized by the UNHCR should not be deported and may travel to a country of their choice—affirming the principle of non-refoulement.

The Supreme Court has also intervened in several cases to halt deportations, including *Maiwand's Trust v. State of Punjab*, *N.D. Pancholi v. State of Punjab*, and *Malavika Karlekar v. Union of India*. In the latter, the Court stayed the deportation of Burmese refugees from the Andaman Islands, noting that their refugee status was still under review. In the Chakma refugee case, the Court reaffirmed that no one should be deprived of life or liberty without due process, echoing earlier rulings in *Louis De Raedt v. Union of India* and *State of Arunachal Pradesh v. Khudiram Chakma*.

Another issue involves 'International Zones' such as airport transit areas, which are treated as legally outside Indian territory. This creates a loophole, depriving refugees of access to Indian courts and legal remedies. In one notable case, a Palestinian refugee was deported back to Kathmandu from the Delhi Airport's transit lounge, effectively denying him any legal protection. This practice contradicts the principle of non-refoulement and limits the ability of refugees to seek relief through the judicial system, leaving them dependent on administrative authorities.

#### **Historical Context and the Chin-Lushai Expedition**

The Chin-Lushai Expedition of 1889–90 was a major British military campaign launched to suppress unrest among the tribes

of the Chin and Lushai Hills along the Burma–India frontier. The expedition aimed to dismantle tribal autonomy, enforce British dominance, and integrate the region into the colonial administrative structure of British India. It demonstrated the British strategy of using overwhelming force to secure control over remote, resistant areas and to impose long-term administrative oversight.

The expedition was triggered by a series of violent incidents following years of relative peace since the earlier 1871–72 Lushai Expedition. A key catalyst was the murder of Captain J.F. Stewart, who was ambushed and killed while surveying for a road in a region prone to tribal raids. His killing, traced to cultural customs of head-taking among the tribes rather than anti-British sentiment, alarmed the British authorities. Soon after, Pakuma Rani, a British-aligned chieftainess, was also killed during a raid, and her village was pillaged. These events, along with the Chengri Valley massacre of 1888, which resulted in over 100 deaths, compelled the British to initiate coordinated military operations to assert full control.

The campaign was executed in two main military columns. The northern column, under Colonel G.J. Skinner, focused on punishing Lengpunga and other tribal leaders implicated in previous raids, and on setting up a permanent outpost near their territories. The southern column, under General V.W. Tregear, aimed to build infrastructure such as a mule path to Haka, establish outposts, and coerce neutral tribes into submission. Disease and harsh terrain challenged the march, but notable tribal surrenders—including that of Howsatta's brothers—were secured, along with the recovery of British weapons and captives.

Further south, Captain John Shakespear and C.S. Murray pursued diplomatic and enforcement operations. Notably, Lalthuama, the son of the chieftainess Ropuiani, was captured and fined for harboring key suspects. Peace was negotiated with friendly chiefs such as Darbili, and others surrendered stolen British property, including Stewart's revolver. The establishment of Fort Tregear at a strategic location consolidated British presence.

In the northern region, British forces found allies among the Howlong chiefs, who opposed Lengpunga's dominance. These local alliances aided British advances through the region. Although Lengpunga surrendered, he was released and later fled, prompting further punitive action, including the burning of non-compliant villages. The campaign also targeted Nikama, another chief involved in the Pakuma Rani raid. Although captives were recovered, failure to meet fines resulted in the destruction of tribal settlements.

In its final phase, the expedition brought several tribal leaders to negotiations, but full surrender of key figures like Lengpunga was not achieved. Nevertheless, the expedition marked a turning point in British policy in the frontier hills. Forts such as Lungleh, Tregear, and Aizawl were established, and political officers were appointed to administer both the northern and southern regions. These moves formalized British annexation

and control, ending traditional tribal autonomy and initiating a new era of direct colonial rule in the Indo-Burmese highlands.

### **Present-Day Refugee Influx and Vulnerabilities**

According to Census 2011, Mizoram had a migrant share of 34.63% of its total population.<sup>1</sup> While much of this movement involves people from within India, the Chin population crossing over from Myanmar since the 1988 pro-democracy crackdown continues to grow. This highlights not only the porous nature of the border but also the failure of centralized refugee screening mechanisms to function efficiently at the state level.

Following the 2021 military coup in Myanmar, large numbers of Chin refugees crossed into India's northeastern state of Mizoram, seeking safety from armed conflict and persecution. Despite the absence of a national refugee policy and explicit directives from the Indian central government to treat these individuals as "illegal migrants," the Mizoram state government and local communities responded with compassion and open support. This humanitarian response was underpinned not merely by political opposition to New Delhi's stance but by a deeply embedded sense of ethnic kinship—the Mizo in India and the Chin in Myanmar share common ancestry, linguistic heritage, and Christian faith.

### **Legal and Administrative Failures in Illegal Cross-Border Trade and Migration**

- **Poor Inter-Governmental Coordination Between Centre and States**

Immigration and border security fall under the Union List in India's constitutional framework, while public order and humanitarian response rest with the states. This division of powers has resulted in fragmented responses to refugee crises. For instance, while Mizoram has welcomed Myanmar refugees citing ethnic kinship (particularly the Chin-Kuki-Zo affinity), it lacks policy and financial backing from the central government. Conversely, Manipur has responded with increased securitization and repatriation calls. The absence of a centralized policy coordination mechanism has resulted in discordant governance, lack of uniform refugee documentation, and gaps in welfare delivery.

- **Lack of UNHCR Access in Northeast India**

A significant institutional gap lies in the restricted operational presence of the United Nations High Commissioner for Refugees (UNHCR). While UNHCR operates in New Delhi, it is not permitted to register refugees in northeastern states such as Mizoram and Manipur. Refugees wishing to obtain documentation must travel to Delhi, an impractical requirement given their precarious financial, legal, and logistical conditions. This exclusion deprives refugees of protection from refoulement, access to international humanitarian assistance, and eligibility for resettlement or voluntary return pathways under international law. Consequently, displaced persons remain dependent on ad-hoc support from local NGOs and civil society organizations, without any formal protective mechanism.

- **Absence of Refugee Identification and Data Systems**  
India currently lacks a national refugee registry or database that systematically tracks undocumented entrants, asylum seekers, or displaced populations. In the absence of formal identification, refugees are excluded from welfare schemes, unable to access public services, and vulnerable to statelessness. Humanitarian organizations face challenges in needs assessment and resource allocation due to the non-availability of disaggregated demographic data. The absence of refugee ID mechanisms also facilitates exploitation in the informal economy, where refugees work without rights, protections, or legal remedies.

- **Policy Conflicts Between Strategic Interests and Human Rights**

India's strategic investments in Myanmar, particularly through the Kaladan Multi-Modal Transit Transport Project under the Act East Policy, have often dictated a cautious foreign policy approach. To safeguard regional connectivity and economic interests, India has avoided taking strong positions on Myanmar's internal conflict and human rights violations. This has led to a reluctance in acknowledging the refugee crisis, framing it instead through a national security lens. Such realpolitik considerations dilute India's commitments under international human rights law and obstruct the development of a robust rights-based migration framework.

The governance of cross-border migration along the India–Myanmar frontier is undermined by a combination of legal ambiguities, institutional fragmentation, security-driven policymaking, and the absence of a rights-based refugee framework. These gaps expose displaced populations to heightened risks of exploitation, invisibility, and abuse, while also weakening India's ability to address the complex interplay of migration, insurgency, and geopolitical strategy. A coherent legal and administrative approach—anchored in human rights, regional cooperation, and legal clarity—is essential to address the growing humanitarian and security challenges at India's eastern frontier.

The fragmented and security-focused approach to managing cross-border migration in Northeast India often overlooks the human suffering at its core, leaving displaced individuals without protection or dignity. To truly address this crisis, India needs a compassionate and unified refugee policy—one that values human rights, fosters cooperation between the Centre and states, and aligns with international humanitarian standards.

### **Policy Recommendations**

- a. **Refugee Data and Management**

Timely and accurate data is essential for informed policymaking and effective aid delivery. District and village-level administrative bodies should maintain updated refugee statistics. These should be shared securely with NGOs and international partners to facilitate better planning and equitable distribution of aid.

#### a. Humanitarian Aid Coordination

The involvement of multiple NGOs, churches, and activist groups has created overlap and inequality in aid distribution. The Mizoram government can act as a coordinating authority to ensure equitable, efficient, and needs-based aid delivery. A centralized coordination mechanism will maximize impact and reduce duplication.

#### a. Monitoring and Accountability Mechanisms

To ensure transparency and effective implementation of refugee-related policies, a statutory body empowered to oversee refugee welfare, advise on policies, and monitor compliance with national and international standards. These should be set up within the State Human Rights Commissions to manage local challenges, especially in border states like Mizoram. Annual Refugee Impact Assessment Reports should be made and these reports should evaluate refugee-related developments, aid delivery, and community impact, and be tabled in Parliament.

#### a. Refugee Status Determination (RSD) Mechanism

A transparent and standardized Refugee Status Determination (RSD) system must be instituted under the Ministry of Home Affairs, with support from the UNHCR and Indian legal experts. This mechanism should allow individuals to formally apply for asylum and receive legal recognition. Issue refugee identity cards and work permits to those granted status. An RSD framework would help avoid arbitrary detentions and ensure access to basic services while maintaining national security through legal screening and tracking.

### CONCLUSION

The study reveals that the porous nature of the Indo-Myanmar border, compounded by deep-rooted ethnic and cultural ties, facilitates irregular migration and enables exploitative practices such as trafficking and statelessness. A significant finding is the absence of a coherent refugee framework in India, along with inconsistent border enforcement and poor inter-agency coordination, which collectively allow systemic neglect of migrants' rights and security concerns.

Further, the research highlights the disconnect between central policies and ground-level implementation, particularly in the Northeast, where local realities are often overshadowed by national security narratives. The lack of bilateral cooperation and formalized protocols between India and Myanmar exacerbates the vulnerability of border populations.

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